



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Mr. Christopher Garza
Assistant District Attorney
Brazoria County
111 East Locust Street, Suite 408A
Angleton, Texas 77515

OR2016-16386

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 617344.

The Brazoria County Clerk's Office (the "county clerk's office") received a request for the voter registration applications and voter histories for four named individuals during a specified time period.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹You state the county clerk's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note the requestor seeks only voter registration applications and voter histories for four named individuals during a specified time period. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents, which we marked, that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the county clerk's office is not required to release that information in response to the request.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 13.004 of the Election Code, which pertains to voter qualifications and registration. Section 13.004 of the Election Code provides, in relevant part, the following:

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

...

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of [the Act]:

(1) a social security number;

(2) a Texas driver's license number;

(3) a number of a personal identification card issued by the Department of Public Safety;

(4) an indication that an applicant is interested in working as an election judge; or

(5) the residence address of the applicant, if the applicant is a federal judge or state judge, as defined by Section 13.0021, the spouse of a federal judge or state judge, or an individual to whom Section 552.1175, Government Code, applies and the applicant:

(A) included an affidavit with the registration application describing the applicant's status under this subdivision, including an affidavit under Section 13.0021 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge;

(B) provided the registrar with an affidavit describing the applicant's status under this subdivision, including an affidavit under Section 15.0215 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge; or

(C) provided the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status under this subdivision.

Elec. Code § 13.004(a), (c). You assert the submitted information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. Upon review, we find portions of the submitted information, which we marked, are subject to section 13.004(c) of the Election Code. Accordingly, the county clerk's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 13.004(c) of the Election Code.

You also seek to withhold the voters' telephone numbers under section 552.101 of the Government Code in conjunction with section 13.004(a) of the Election Code. *Id.* § 13.004(a). However, for information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Although section 13.004(a) prohibits the county clerk's office from transcribing, copying, or otherwise recording the telephone numbers at issue in response to this request for information, it does not make the telephone numbers confidential. Furthermore, section 13.004(a) does not prohibit access to and inspection of the telephone numbers at issue. *Cf.* Election Law Opinion No. JWF-24 (1984) (although voter registrar is prohibited from transcribing, copying, or recording any telephone numbers furnished on a voter registration application, persons inspecting the files were not subject to this prohibition). Thus, although you may not transcribe, copy, or record the telephone numbers, the county clerk's office must allow inspection of the telephone numbers at issue.

The county clerk's office seeks to withhold the remaining information under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. However, we find the county clerk's office has failed to demonstrate the remaining information is excepted from public disclosure under section 13.004. Therefore, the county clerk's office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Thus, the county clerk's office must withhold all public citizens' dates of birth, which we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, this ruling does not address the public availability of any information that is not responsive to the request. The county clerk's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 13.004(c) of the Election Code and must allow inspection of the telephone numbers at issue pursuant to section 13.004(a). The county clerk's office must also withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

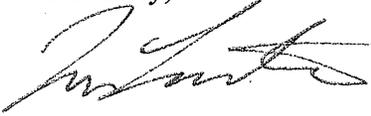
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Lancaster', written in a cursive style.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/dls

Ref: ID# 617344

Enc. Submitted documents

c: Requestor
(w/o enclosures)